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IN THE
Supreme Court of the United States

OCTOBER TERM, 1951

No. 275

UNITED STATES OF AMERICA, ex rel

HUBERT JAEGELE, Petitioner,

v.

UGO CARUSI, Commissioner of Immigration and Naturalization, and CARL ZIMMERMAN, District Director for District No. 1, Philadelphia, Respondents

MEMORANDUM

and

SUPPLEMENT TO BRIEF OF PETITIONERS

sur

PETITION FOR CERTIORARI

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Supreme Court of the United States

OCTOBER TERM, 1951, No. 275.

United States of America, ex rel.

Hubert Jaeger,

Petitioner,

v.

Ugo Carusi, Commissioner of Immigration and Naturalization, and Carl Zimmerman, District Director for District No. 1, Philadelphia,

Respondents.

MEMORANDUM

of

**RESOLUTION OF CONGRESS TERMINATING WAR
WITH GERMANY**

and

CHANGING STATUS OF RELATOR

To THE HONORABLE, THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES OF AMERICA:

Your Petitioner, the United States of America *ex rel* Hubert Jaeger, by his Attorneys, George C. Dix and Gordon Butterworth respectfully suggest that the Con-

gress of the United States of America by Resolution, on October 18, 1951, signed by the President on October 19, 1951, terminated the war with Germany.

That your Petitioner was a native born German, and a lawful quota immigrant in the United States on December 9, 1941, when he was taken into custody by the F.B.I., acting on behalf of the Department of Justice, pursuant to the provisions of the Alien Enemy Act and the Presidential Proclamation, charging him with being an alien enemy.

That Relator was incarcerated from December 9, 1941 until May, 1947, when he was set at liberty by Order of the Department of Justice, pending a disposition of this case.

That a Petition for Certiorari is before your Honorable Court to determine whether he was deprived of his right of voluntary departure.

That pending a decision on such petition and answer, the Congress of the United States on October 18, 1951, passed a Resolution terminating the state of war with Germany. The President signed the Resolution of October 19, 1951, terminating the war as of that date.

That by reason of such resolution, the status of Relator was changed from that of an alien enemy back again to that of a lawful quota immigrant in the United States.

Wherefore Relator suggests that the said Resolution terminated the power and authority of the Department of Justice and the Attorney General, acting by authority of the said Proclamation, to order the removal of Relator from this country;

that the question of the deprivation of Relator's right to voluntary removal is moot,

and he therefore suggests that the decrees of the Lower Courts be vacated, and the Relator be released.

SHORT STATEMENT OF ADDITIONAL MATTERS INVOLVED.

I.

This case involves the deprivation of Petitioner's right of voluntary departure under the Alien enemy Act, and Presidential Proclamation.

(stated and argued in Original Brief)

II.

and Whether the Resolution of Congress passed October 18, 1951, signed by the President October 19, 1951, terminated the authority and power of the Department of Justice and the Attorney General to remove Relator from the country.

SUPPLEMENTARY SUMMARY.

The question before this Honorable Court on the Original Brief is whether the Department of Justice has authority to remove Relator from this country, by depriving him of his right of voluntary departure.

Relator was at the time of the removal order an alien enemy, he being a native born German, a lawful quota immigrant in this United States.

Subsequent to the removal order and in fact since the filing of the Petition for Certiorari and the answer thereto by the Respondents, and before any decision has been handed down in this matter, the Government of the United States by resolution of Congress on October 18, 1951, signed by the President on October 19, 1951, terminated the war with Germany, thereby changing the status of Relator from that of an alien enemy back again to that of a lawful quota immigrant.

ADDITIONAL QUESTION PRESENTED.

Whether the Resolution of Congress of October 18, 1951, signed by the President of October 19, 1951, revoked the status of Relator as an alien enemy, and terminated the authority of the Department of Justice and the Attorney General under the Enemy Alien Act and the Presidential Proclamation to remove Relator from this country as an alien enemy.

ADDITIONAL REASONS RELIED ON FOR RELIEF.

THAT SINCE THE FILING OF THE Petition for Certiorari and the answer thereto, the Congress of the United States has terminated the war with Germany.

U. S. *ex rel* Kessler *v.* Watkins, 163 Fed. 2, 140;
U. S. *ex rel* Ludecke *v.* Watkins, 163 Fed. 2, 143.

ARGUMENT.

The several additional issues raised by this Memorandum as a supplement to Petitioner's Brief are matters of substantive law and not mere technicalities.

I.

Did the termination of War also terminate the authority of the Attorney General to remove Relator?

The Statute under which the Attorney General acted in ordering the removal of Relator¹ was and is predicated on a present state of War between the two countries, and establishes a status for the citizens of those countries calling them "enemy aliens". Obviously that status exists

¹ R.S. Par. 4067: April 16, 1918. Ch. 55; 40 Statutes 531, Page 47a of Record.

only so long as the State of War exists.. When it ends, so also ends the status of "enemy aliens." That person then becomes what he was before war existed, in this case a lawful quota immigrant.

The Act itself in its very words says "whenever there is a declared war * * * all natives of the hostile nation—shall be removed as alien enemies". So, if there is not a state of war, Relator would not be removed. If a state of war is terminated, and no longer exists, there is no reason or excuse for his removal.

The Presidential Proclamation (Record 49a) provides that "all alien enemies * * * who shall be deemed dangerous * * * shall be subject to removal".

This is not a case where Relator is charged with any offence. *As a matter of fact, he never was told of what he was even suspected.* He was ordered removed, like many others, because he was "deemed to be dangerous to the public peace and safety of the United States * * *". That was in January 1946.

The fact that immediately after he was notified that he was deemed to be dangerous, he was given 30 days to depart, and then he was released, and set free, without any custody or control, and he has been free from that time down to the very present, is conclusive proof that he was not and is not dangerous..

Certainly if the Department of Justice had believed that he was even slightly dangerous, they would never have released him. They would have kept him on Ellis Island. This is not presented as a legal argument, but as evidence of the fact that the whole thing was only a precautionary matter during the Emergency. The Emergency has long since ended. He should be free.

The Senate on October 18, 1951, passed a Resolution (H. J. Res. 289) (Calendar No. 844) (Report No. 892) which had been previously passed by the House, terminating the War with Germany. It was signed by the

President on October 19, 1951, thereby becoming the "Law of the Land", by the very terms thereof; i. e.:

"The State of War declared to exist between the United States and the Government of Germany • • • is hereby terminated, and such termination shall take effect on the date of enactment of this Resolution".^{1a}

Hostilities were declared to have ceased in December of 1947. The War itself is now formally declared to have terminated.

It will be noted that while special mention was made in the Resolution as to alien property, no exception was made as to the removal of alien enemies.

The opinions of the Courts have been unanimous in holding that the mere cessation of hostilities is not sufficient to cause a release of the alien enemy from the purview of the Statute.² It is necessary that the War be officially terminated, and it was terminated so that we would be friendly with the German people. We must *not* show our friendliness by removing them as alien enemies.

Mr. Justice Hand³ said: "The alien enemy Act remains effective with respect to interned German alien enemies so long as a state of 'War' exists with the German Nation," and the Courts refused to release any of these men until the War should be formally terminated.

Conversely, when no state of war exists, the Act is not effective. If the Act is not effective, Relator is no longer subject to its provisions.

The plain intention of the Act and of the Proclamation, and of the proceedings of the Department pursuant to them was to protect the country from danger during the emergency. That time—that emergency has passed.

^{1a} Resolution, page 8.

² U. S. *ex rel.* Kessler *v.* Watkins, 163 Fed. 2, 140.

³ U. S. *ex rel.* Ludecke *v.* Watkins, 163 Fed. 2, 143.

II.

Habeas Corpus Proceedings must be disposed of as of time of appeal.

The present issue should be determined in the light of the law, and its application to facts, as it is at the time of this Argument, and not as it was when the original order was made.⁴

In this very case Judge Kilpatrick on three separate occasions decided in favor of Relator, and it was only at the last rehearing and the submission of a then new authority by Respondent that he reversed his prior decisions. Obviously, he was interpreting the Law as he understood it to be at the time of each decision.

We ask the same consistency now.

The Relator is no longer an alien enemy, he is no longer subject to the provisions of the Act or Proclamation. We quote:

"We have just held that we must dispose of orders in Habeas Corpus Proceedings according to the law as it exists at the time we decide the appeal, not at the time when the order was made."⁵

It is respectively submitted that in the light of the action of Congress, and the authorities cited,

that the Resolution of Congress, signed by the President, terminated the power and authority of the Department of Justice and the Attorney General to order the removal of Relator from the country; *that* the question of the deprivation of Relator's right to voluntary removal as therefore moot; *and that* the Decrees of the Lower Courts should be vacated, and Relator released.

Respectfully submitted,

GEORGE C. DIX,

GORDON BUTTERWORTH,

Attorneys for Petitioner.

⁴ U. S. ex rel. Piuzzo v. Shaughnessy, 184 Fed. 2, 666.

⁵ U. S. ex rel. Wiewski v. Shaughnessy, 185 Fed. 2, 347.

Calendar No. 844

82D CONGRESS
1ST SESSION

H. J. RES. 289

[Report No. 892]

IN THE SENATE OF THE UNITED STATES

JULY 30 (legislative day, JULY 24), 1951

Read twice and referred to the Committee on Foreign Relations

OCTOBER 8 (legislative day, OCTOBER 1), 1951

Reported by Mr. CONNALLY, with an amendment

[Insert the part printed in italic]

JOINT RESOLUTION

To terminate the state of war between the United States and the Government of Germany.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the state of war declared to exist between the United States and the Government of Germany by the joint resolution of Congress approved December 11, 1941, is hereby terminated and such termination shall take effect on the date of enactment of this resolution: *Provided, however,* That notwithstanding this resolution and any proclamation issued by the President pursuant thereto, any property or interest, which prior to January 1, 1947, was subject to vesting or seizure under the provisions of the Trading With the Enemy Act of October 6, 1947 (40 Stat. 411), as amended, or which has heretofore been vested or seized under that Act, including accruals to or proceeds of any such property or interest, shall continue

to be subject to the provisions of that Act in the same manner and to the same extent as if this resolution had not been adopted and such proclamation had not been issued. Nothing herein and nothing in such proclamation shall alter the status, as it existed immediately prior hereto, under that Act, of Germany or of any person with respect to any such property or interest.

Any citizen (or his successors in interest) whose property was acquired by vesting or otherwise by the Alien Property Custodian and who thereafter instituted suit to recover such property in the manner provided in section 9 (a) of the Trading With the Enemy Act, and subsequent to the institution of such suit, and during the existence of the state of war with Germany hereby terminated, entered into an agreement with officers or agents of the United States, purporting to compromise or release his claim without a full hearing on the merits by a court of competent jurisdiction to determine whether such property was validly vested under the Trading With the Enemy Act, may, within one year of the effective date of this resolution, institute suit to recover such property in the manner provided in section 9 (a) of such Act; and no agreement, compromise, or release executed by such citizen during the state of war and purporting to convey such property to the Alien Property Custodian or to release any claim by the citizen to such property and no judgment entered on any such agreement, compromise, or release shall be pleaded in bar of such suit; it being the intent of this section to afford every such citizen whose property was so acquired by the Alien Property Custodian an opportunity for full hearing on the merits of his claim to such property. A claimant hereunder shall not be required, as a condition precedent of instituting such suit, to tender back any benefit or consideration received by him in connection with any release, compromise, or agreement executed by him, but the court shall, in its final

judgment, make such order with respect to any such benefit or consideration as it shall deem equitable in the circumstances.

Passed the House of Representatives July 27, 1951.

Attest: RALPH R. ROBERTS,
Clerk.⁶

⁶ Note. This is the form in which the Resolution was presented to the Senate on Oct. 8, 1951, and the same form in which it was passed, and is the latest available printed form at this time. This may be verified from the Congressional Record of Oct. 18, 1951, no printed copy of which is yet available.

⁷ The Joint Resolution was signed by the President on Oct. 19, 1951, and no printed copy of that is yet available.